

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Bryan Milazzo,

Plaintiff,

v.

Peter Anthony,

Defendant.

Civil Action No. 2:23–cv–576-kjd

ORDER
(Doc. 54)

Self-represented Plaintiff Bryan Milazzo brings this action against Peter Anthony pursuant to 18 U.S.C. § 2255. Plaintiff seeks “compensatory and exemplary damages for injuries suffered as the result of Defendant Peter Anthony aiding and abetting . . . sexual activity against Plaintiff, a minor” (Doc. 1 at 1.)

On January 29, 2024, Defendant filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). (Doc. 13.) On February 22, 2024, Plaintiff filed a Response in Opposition to Defendant’s Motion to Dismiss. (Doc. 23.) On February 29, 2024, Defendant filed a Reply to Plaintiff’s Response to the Motion to Dismiss. (Doc. 28.) On March 14, 2024, Plaintiff filed a Response to Defendant’s Reply. (Doc. 38.) The Court scheduled a hearing for May 15, 2024 to address Defendant’s Motion to Dismiss, Plaintiff’s Motion to Unseal Vermont Superior Court Case, and Defendant’s Motion for Discovery Scheduling Conference. (*See* Doc. 53.)

On May 10, 2024, Plaintiff filed a Motion to Dismiss under Federal Rule of Civil Procedure 41. (Doc. 54.) Plaintiff states that “[d]ismissal is appropriate under Rule 41 as the Defendant has not filed an answer or moved for summary judgment.” (*Id.*)

Under Federal Rule of Civil Procedure 41, a plaintiff may dismiss an action without a court order by filing a “notice of dismissal” before an answer or motion for summary judgment is served. Fed. R. Civ. P. 41(a)(1)(A)(i). Such a dismissal does not require approval or action by the court because the plaintiff retains an “unfettered right voluntarily and unilaterally to dismiss an action.” *Thorp v. Scarne*, 599 F.2d 1169, 1175–76 (2d Cir. 1979).

In this case, because neither an answer nor a motion for summary judgment has been filed, Plaintiff may voluntarily dismiss his case. *Callanan v. Nat’l R.R. Passenger Corp.*, 2021 WL 1178207, at *1 (D. Conn. Mar. 29, 2021) (“Because Defendant has not filed an answer or a motion for summary judgment, Plaintiff still has the right to voluntarily dismiss this action without the [c]ourt’s intervention, and his motion should be interpreted so as to [e]ffect that outcome.” (internal citation omitted)). Plaintiff’s Motion to Dismiss (Doc. 54) operates as his Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A)(i).

Plaintiff’s Motion to Dismiss closes the case. *See Thorp*, 599 F.2d at 1176 (“So long as plaintiff has not been served with his adversary’s answer or motion for summary judgment he need do no more than file a Notice of dismissal with the Clerk. That document itself closes the file.”) The Clerk of the Court is respectfully directed to close this case. As the case is closed, Defendant’s Motion to Dismiss (Doc. 13) and Plaintiff’s Motion to Unseal Vermont Superior Court Case (Doc. 43) are DENIED as moot.

The hearing scheduled for May 15, 2024 is canceled.

Dated at Burlington, in the District of Vermont, this 13th day of May 2024.

/s/ Kevin J. Doyle
Kevin J. Doyle
United States Magistrate Judge